

**ENTERED**

October 13, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION

JARVIS LIVINGSTON,

Plaintiff,

v.

STATE OF TEXAS, et al.,

Defendants.

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Civil Action No. 6:21-CV-00007

**ORDER ACCEPTING MEMORANDUM AND RECOMMENDATION**

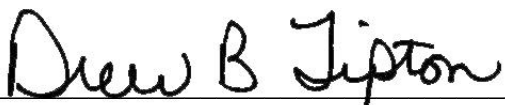
Before the Court is the March 24, 2021 Memorandum and Recommendation (“M&R”) signed by Magistrate Judge Jason B. Libby. (Dkt. No. 10). In the M&R, Magistrate Judge Libby screens claims by Plaintiff Jarvis Livingston, appearing *pro se* and *in forma pauperis*, under 28 U.S.C. § 1915(e)(2). With the exception of his claims for false arrest and excessive force against Defendant Officers Mendoza, Lopez, and John Doe, the M&R recommends dismissing Livingston’s claims with prejudice because they are frivolous, fail to state a claim on which relief may be granted, or seek relief against a defendant who is immune. *See* 28 U.S.C. § 1915(e)(2)(B). The M&R recommends retaining the claims of false arrest and excessive force against Officers Mendoza, Lopez, and John Doe and staying those claims. Magistrate Judge Libby stayed those claims by separate order, pending the resolution of related criminal cases. (Dkt. No. 11); *see Heck v. Humphrey*, 512 U.S. 477, 486–87, 114 S.Ct. 2364, 2372–73, 129 L.Ed.2d 383 (1994); *Mackey v. Dickson*, 47 F.3d 744, 746 (5th Cir. 1995) (per curiam). The stay has since been lifted. (Dkt. No. 19).

The Parties were provided proper notice and the opportunity to object to the M&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); General Order No. 2002-13. No party has objected. As a result, review is straightforward – plain error.<sup>1</sup> *Guillory v. PPG Indus., Inc.*, 434 F.3d 303, 308 (5th Cir. 2005). No plain error appears. Accordingly, the Court **ACCEPTS** the M&R as the Court’s Memorandum Opinion and Order.

The Court **RETAINS** Livingston’s claims of false arrest and excessive force against Defendant Officers Mendoza, Lopez, and John Doe.<sup>2</sup> The Court **DISMISSES WITH PREJUDICE** Livingston’s remaining claims.

It is SO ORDERED.

Signed on October 12, 2021.

  
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DREW B. TIPTON  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> By contrast, when a “district court undertakes an independent review of the record,” the “review is *de novo*, despite any lack of objection.” *Alexander v. Verizon Wireless Servs., L.L.C.*, 875 F.3d 243, 248 (5th Cir. 2017).

<sup>2</sup> Because Magistrate Judge Libby has lifted the stay pending resolution of the related criminal cases, the M&R’s recommendation to stay the claims is no longer before the Court.